



**UNITED STATES DEPARTMENT OF COMMERCE  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/611,804	03/06/96	WOHLSTADTER	370068-6150

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18M2/0429

EXAMINER
ACHUTAMORTHY, P

ART UNIT	PAPER NUMBER
1818	

DATE MAILED: 04/29/97

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

08/611,804

Applicant(s)

Wohlstadter et al

Examiner

P.Achutamurthy

Group Art Unit

1818



☐ Responsive to communication(s) filed on \_\_\_\_\_.

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire \_\_\_\_\_ month(s), or thirty days whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-79 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☐ Claim(s) \_\_\_\_\_ is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☒ Claims 1-79 are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

**Part III DETAILED ACTION**

*Election/Restriction*

Restriction to one of the following inventions is required under 35 U.S.C. 121:

Group I. Claims 1-39, and 66, drawn to apparatus for conducting electrochemiluminescence (ECL) assays , classified in Class 422, subclass 52, 58, for example.

Group II. Claims 40, 41, 72-77, drawn to a method for conducting plural ECL determination on a sample, classified in Class 435, subclass 4, 7.1, 7.2, for example.

Group III. Claims 42-49, drawn to an article intended for conducting ECL determinations, classified in Class 422, subclass 102, for example.

Group IV. Claims 50-57 and 67, drawn to a cassette for conducting ECL determinations, classified in Class 422, subclass 52, 98, for example.

Group V. Claims 58, and 59, drawn to a method of making binding domains, classified in Class 436, subclass 501, 164, for example.

Group VI. Claims 60, and 68071, drawn to method of detecting or measuring analytes in a sample, classified in Class 435, subclass 4, 7.1, 7.2, for example.

Group VII. Claims 61-65, drawn to a kit for conducting ECL assays, classified in Class 422, subclass 61, for example.

Group VIII. Claims 78, and 79, drawn to a system for conducting ECL determinations, classified in Class 422, subclass 52, for example.

The inventions are distinct, each from the other because of the following reasons:

Inventions I, III, IV, VII, and VIII are disclosed as different combinations which are not connected in design, operation or effect. These combinations are independent if it can be shown that (1) they are not disclosed as capable of use together, (2) they have different modes of operation, (3) they have different functions, or (4) they have different effects. (MPEP 806.04, MPEP 808.01). In the instant case the combinations have different modes of operation, different functions and/or have different effects.

Inventions any of Groups I, III, IV, VII, VIII or Group V, and II or VI, are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the apparatus, cassette, article, kit or system can be used in a mutually materially different process such as determining ECL of a given sample as compared to Group II or in methods of measuring analytes in a sample as compared to Group VI.

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Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and/or because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

A telephone call was made to Mr. David Ruben on 25 April 1997 to request an oral election to the above restriction requirement, but did not result in an election being made. In view of the large number of groups and the time needed to consult with the applicants, it was agreed that a written restriction requirement will be issued.

Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(h).

Applicant is required reply to this restriction requirement WITHIN 30 DAYS from the date of mailing of this action. See MPEP 809.02 (a).

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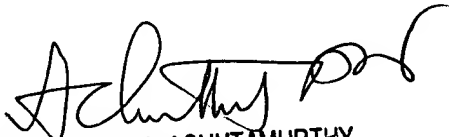
**Note:** The location of the art unit handling this application is now **1818**. Please be sure to indicate the correct art unit in future papers filed in this application to facilitate their timely entry.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to P. Achutamurthy whose telephone number is (703) 308-3804. The examiner can normally be reached on Monday-Thursday from 7:00 am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald E. Adams, Ph.D., can be reached on (703) 308-0570. The fax phone number for this Group is (703) 305-7939.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

pa  
26 April 1997

  
PONNATHAPURA ACHUTAMURTHY  
PRIMARY EXAMINER  
GROUP 1800